IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.850 OF 2006
IN
ARBITRATION PETITION NO.345 OF 2006

Ashok Leyland Finance .... Appellant
Vs.
Nilesh S. Mokashi & Ors. .... Respondents

Ms Shakuntala Joshi for the Appellant.

None present for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: JANUARY 29, 2007

P.C:

1. Heard the learned Advocate for the appellant. None present for the respondents, though served.

2. This appeal arises from the order passed by the learned single Judge dismissing the petition under Section 9 of the Arbitration and Conciliation Act, 1996, hereinafter called as "the said Act" solely on the ground that the appellant can approach the arbitrator for the relief asked for in terms of the provisions of law comprised under Section 17 of the said Act. The learned single Judge has held that the relief asked for is in the nature of temporary injunction against the parties to the proceedings and, therefore, the appellant can very well approach the arbitrator before whom the

proceedings are pending for necessary relief in that regard.

3. Perusal of the arbitration petition, which was filed before the learned single Judge, discloses that apart from praying for temporary injunction restraining the respondents from creating third party rights and disposing of the property in question, the appellant also prayed for the appointment of Court Receiver as also for other relief in the nature of direction to deposit certain amount during the pendency of the proceedings.

4. It is settled law that in terms of the provisions of law comprised under Section 17 of the said Act, arbitrator is duly empowered to issue necessary interim orders as far as they relate to the parties to the proceedings. However, when the party approaches the Court in arbitration petition seeking relief against the third party in the nature of appointment of Court Receiver during the pendency of the proceedings, the provisions of law comprised under Section 17 do not empower arbitrator to grant any such relief to the party. The scope of powers of the arbitrator under Section 17 being of a limited nature and they cannot be exercised in relation to matters pertaining to third party or when the party approaches for the relief of

appointment of Court Receiver, it was necessary for the learned single Judge to consider this aspect of the matter as the appellant in the case in hand had also prayed for the relief in the nature of appointment of Court Receiver as well as for injunction to restrain the respondents from creating third party rights.

5. Plain reading of the prayer clauses (a) and (b) in the arbitration petition obviously discloses relief in the nature of injunction against the respondents from disposing of and parting with possession as well as creating of third party rights and at the same time, under the clause (b) for appointment of Court Receiver in relation to the property in question. Since the impugned order nowhere discloses consideration of this aspect of the matter i.e. in relation to appointment of Court Receiver as also in relation to the third party rights which are sought to be created in the property in question, in the interest of justice it would be appropriate to set aside the impugned order and to remand the matter to the learned single Judge for consideration of all these aspects, more particularly taking into consideration the scope of powers of arbitrator under the provisions of law comprised under Section 17 in comparison to that of the Court under Section 9 of the said Act. We make it clear that we have not expressed any opinion on any of the issues

sought to be raised on merits of the case and all the issues are kept open for consideration by the learned single Judge. Liberty to the parties to move for expeditious disposal of the petition. With these directions, the appeal is disposed of with no order as to costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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